

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5212 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAFIK RAFIK PATHAN

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

Mr.SJ DAVE, A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 04/08/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 18th December, 1996 rendered by respondent No.1 u/s.3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), for short "the PASA Act".

2. The grounds, on which the impugned order of detention has been passed appear at Annexure : C. They inter alia indicate that the petitioner has been indulging in criminal and anti-social activities of committing thefts of movables resulting in fear in the mind of people about the security of their movables. The Detaining Authority has placed reliance upon five cases of 1996 respectively registered with D.C.B. and Makarpura Police Stations, Baroda inter alia under Sections 379 and 380 of the Indian Penal Code. The particulars of such offences have been set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of three witnesses have been relied upon. They speak about the incidents dated 9.11.1996, 18.11.1996 and 5.12.1996 indicating beating in public the concerned witnesses and creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been branded as a dangerous person within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta,  
C.P. reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras : 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. In reply Mr. S. J. Dave, learned A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi V/s. State of Maharashtra and anr., reported in AIR 1992 SC 979. However, the learned Advocate for the petitioner has relied upon a decision of this Court rendered by a Division Bench (Coram : A.P.Ravani, as His Lordship then was & J.M.Panchal, JJ., per : Ravani,J.) on 3rd March 1993 in Special Criminal Application No. 1681 of 1992, wherein 19 cases were registered against the detenu there. The Bench held that by the very nature of the offences it would be difficult to say that these offences would affect the even tempo of public life. In that view of the matter the ratio in Harpreet Kaur's decision (supra) can hardly have any application to the facts of the petitioner's case.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

8. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu Safik Rafik Pathan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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